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COURT OF CRIMINAL APPEALS
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PD-0243-20
In the Court of Criminal Appeals of Texas
At Austin

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No. 14-17-00932-CR
In the Court of Appeals
For the Fourteenth District of Texas
At Houston

———♦———

No. 1435566
In the 178th District Court
Of Harris County, Texas

———♦———

Sandra Jean Melgar
Appellant

v.

The State of Texas
Appellee

———♦———

State's Brief on Discretionary Review

———♦———

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Trial Court:

> **Kelli Johnson**, presiding judge

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Statement of the Case

The appellant was indicted for murder (CR 8). She pleaded not guilty. (4 RR 11). A jury found her guilty as charged and assessed punishment at twenty-seven years' confinement and a $10,000 fine. (CR 427, 439, 443). A unanimous panel of the Fourteenth Court affirmed the appellant's conviction and sentence. *Melgar v. State*, 593 S.W.3d 913 (Tex. App.—Houston [14th Dist.] 2019, pet. granted).

Appellant's Grounds for Review

1. Did the Court of Appeals' legal sufficiency of the evidence analysis comport with *Jackson v. Virginia's* additional requirement that a reviewing court must determine "whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt", especially when the panel mischaracterized crucial evidence, failed to fairly and critically assess what the record evidence showed, and ultimately supplied "a bridge to the analytical gap" in the prosecution's case, by theorizing or guessing about the meaning of evidence and reaching conclusions based on speculation, conjecture, and inferences unsupported by the record evidence?

2. Consistent with Due Process, in an appellate review of the legal sufficiency of evidence, can a jury's assumed disbelief of certain witness testimony establish *substantive proof to the contrary of that testimony*?

3. Did the Court of Appeals fail to apply part of the legal sufficiency standard which, according to *Brooks v. State,* "essentially incorporates a factual sufficiency review into" a review for legal sufficiency?

4. Did the Court of Appeals in its review of the legal sufficiency of the evidence fail to consider *all* of the trial evidence as required by *Jackson v. Virginia,* as opposed to just the evidence tending to support the verdict, although not establishing guilt beyond a reasonable doubt?

Summary of the Argument

The appellant uses a lot of words to obscure the simple truth of this case: She was alone at her house with her husband when he got murdered, and the only thing suggesting anyone else did it is her self-serving story.

She has presented this court with four complicated-sounding grounds for review. But after stating her grounds at the beginning of her brief she never again refers to them or connects her arguments to any particular grounds. Her brief shows she is relitigating the Fourteenth Court's interpretation of the facts, not arguing interesting legal questions.

The State will show that the Fourteenth Court correctly applied well-settled rules of sufficiency review. That court concluded the jury was free to disregard the pro-defense evidence the appellant relies on to this Court, and make inferences of guilt by connecting circumstances in ways different from how defense counsel would prefer. The State

will then address several things the appellant says that sound like legal complaints but are just efforts to relitigate her jury argument.

To write an opinion in which the appellant wins, this Court will have to give weight to evidence the jury was not obliged to believe. Unless this Court wishes to overhaul the system of sufficiency review in Texas it must affirm the Fourteenth Court or dismiss this case as improvidently granted.

Summary of the Facts

The appellant was found alone in her house with her murdered husband. She gave police an incredible version of events that is in part directly contradicted by evidence. And there is no hard proof of anyone else being there.

Statement of Facts

When EMS arrived at the appellant's house on December 23, they found her alive and her husband, Jaime, dead. (6 RR 24-25). Jaime was in the bedroom closet and had 31 stab or incised (*i.e.*, slash) wounds. (State's Ex. 677 (autopsy report)).

All or nearly all the injuries were inflicted as Jaime was standing inside the closet facing out. (9 RR 42-43). Jaime had several injuries to

the outside of his hands and arms, showing he was alive and trying to block knife blows during the attack. (8 RR 173). Immediately behind where Jaime stood in the closet as he was stabbed, at about waist height, was a loaded pistol. (4 RR 136-37; State's Exs. 377-78). But all of Jaime's injuries were on the front of his body, showing he never turned his back on the attacker to get the gun.[1] (9 RR 44-45). All of the stab wounds were fairly shallow; the deepest was three inches but most were less than two. (8 RR 180-86; State's Ex. 719A).

There were two types of loose bindings on Jaime's body: A telephone cord wrapped around his ankles and a red cord across his chest. (State's Exs. 401, 406). Neither left marks on the body. (8 RR 192-93). The medical examiner would later testify that the telephone cord was put around Jaime's ankles after he had sustained the injuries. (8 RR 192). This opinion was based on the fact that Jaime's ankles were tied in a crossed position, and if he had been standing up and struggling while his ankles were tied in a crossed position there would have likely been some sort of injury from the cord. (8 RR 192). Part of a

[1] The appellant told police she thought Jaime was in the closet because he was going for the gun. (8 RR 111-12). She said she was aware there was a gun in the closet but did not know where, exactly, it was. (8 RR 112). This indicates the gun was likely Jaime's and he would have known where it was. Supporting this inference is the fact that the gun was in a location where he would have seen it anytime he moved his shirts around.

plastic dry cleaning bag was tied up in the cords, showing the cord was tied while Jaime was already in the closet. (9 RR 60).

The first deputies to arrive on scene went through the house to confirm there was no one else there. (6 RR 80). They observed that the tub in the master bathroom was half full of water, and there was a white blouse and a large chef's knife in it. (6 RR 80-81). Harris County Precinct 4 Deputy Jennifer Martinez noted the appellant was crying, "but she did not have tears. She was hyperventilating….really nervous." (6 RR 81). Martinez did not observe any marks on the appellant's wrists or ankles. (6 RR 92-93). The appellant told Martinez that she and Jaime had been taking a bath, and the last thing she remembered was that Jaime got out of the bath to let their dogs in, because their dogs were barking. (6 RR 83). The appellant said she got out of the tub and passed out in the bathroom closet. (6 RR 83, 91). The appellant told Martinez she "commonly has blackouts and seizures." (6 RR 83).

After talking with Martinez the appellant was evaluated by a paramedic. (6 RR 86). The appellant told the paramedic she had no injuries, but the left side of her head hurt. (6 RR 26-27, 33). The paramedic examined the appellant's head and found no signs of injury. (6 RR

33-35). The appellant told the paramedic that beginning around 10:30 the prior evening, she and Jaime had spent a couple of hours in the bathtub together. (6 RR 31). She said the last thing she remembered was getting out of the bathtub and getting dressed around 1:00 a.m. (6 RR 31-32). The appellant told the paramedic she had a seizure disorder and, because her head and joints hurt when she woke up, believed she had had a seizure. (6 RR 32).

Crime scene investigators from the Harris County Sheriff's Office arrived on the scene later. (4 RR 43). There were no signs of forced entry on any of the windows or doors, suggesting that if the doors were locked the only way in or out would have been through the garage, which was open when police arrived. (4 RR 58-59, 77-78, 163-64). In the dining room was a mop and bucket; Martinez said the bucket smelled of bleach. (4 RR 70; 6 RR 93; State's Ex. 81).

The scene did not look like a typical burglary. (6 RR 83). Around the house many drawers were slightly opened, containing still-folded clothing. (6 RR 83; State's Ex. 146; *see* State's Ex. 242 (chest with drawers open, and tubes of lotion standing vertically inside)). One bedroom had a jewelry box on top of a dresser with well-ordered jewelry still on and in it. (4 RR 87; 6 RR 83; State's Exs. 146, 150). Items

easy to transport and sell were still laying around in plain view. (6 RR 95; *see* State's Exs. 223 (camera in opened drawer) 254 (cell phone on bed)).

The appellant agreed to speak to police. Over the course of her interview her story evolved somewhat, but it centered on her being unconscious in the bathroom closet during the killing. (State's Ex. 673). She said that she and Jaime were in the bathtub and around 1:00 a.m. he got up to let the dogs in because they were barking. (State's Ex. 673). She said that Jaime took a long time to let the dogs in, so after fifteen minutes she got up, went to the closet to change clothes, and that was the last thing she remembered until she woke up in the closet bound with a pain in her head. (State's Ex 673). She later said she thought she must have had a seizure, either spontaneously or from being hit on the head. (State's Ex. 673). She told officers she had been having increasingly frequent seizures in the preceding months. (State's Ex. 673). By the end of the interview she believed she had been hit on the head, which caused her to have a seizure. (State's Ex. 673).

At trial, the State introduced medical records showing the appellant had been telling her doctor for years that her seizure condition was stable. (7 RR 96-98; State's Ex. 674). In July 2012 (five months

before the murder) and April 2013 (three-and-a-half months after the murder), the appellant told her doctor she had had no seizures. (7 RR 98-99; State's Ex. 674).

A few days after the murder the appellant's daughter, Elizabeth, contacted investigators with a list of items she believed may have been stolen during the purported burglary. (10 RR 175-76). Many of these items had been collected by the sheriff's office during the investigation. (10 RR 177-78). Elizabeth also reported that a guitar was missing; an investigator noted that a closed, empty guitar case was at the scene in an orderly location, thus it seemed unlikely the guitar had been removed from the case and taken during a burglary (10 RR 179). Elizabeth also reported that some unspecified "medications" and a small television were missing. (10 RR 178-79).

Argument

A proper sufficiency review here begins with disregarding evidence the jury could have disregarded based on credibility.

The appellant has twenty-two pages of argument, all of which revolve around the same logical fallacy she relied on in the Fourteenth Court: She treats the core of her story as true and argues the State failed to fit a theory of guilt within her narrative. (*See* Appellant's Brief

at 79-100). But neither the jury nor this Court has to accept the appellant's version of events.

Other than her statement, there is no evidence of her and Jaime being in the bathtub for hours, of the dogs barking, or of her passing out in the closet. Although the jury was free to disbelieve her statement based on her demeanor, the inconsistencies, gaps, and proven lies in her story provided a good reason for the jury to believe the appellant lied to police to conceal her guilt.

The appellant's brief relies on the testimony of family members who found her in the closet. Those family members claimed Jaime had invited them over for dinner around 3:30 to 4:00 on the afternoon. (9 RR 148). They claimed that when they arrived the door was locked and no one answered, but a garage door was opened and they entered the house there. (9 RR 150-51, 153). Jaime's brother Herman testified that when he got in the house heard the appellant call out; he followed the voice to a closet in the master bathroom. (9 RR 156-57). Herman said he saw a chair "jamming" the closet door shut.[2] (9 RR 159).

[2] An investigator did an experiment and found that it was possible, by placing the chair on the pillow sham and then pulling the pillow sham under the door, for someone to jam the chair under the closet door knob from inside the closet. (6 RR 214-17; *see* State's Ex. 672 (video of experiment)). When the investigator conduct-

Herman said he moved the chair and found the appellant inside; her wrists were tied behind her back with a purple cord and her ankles were tied with a scarf. (11 RR 116). The appellant supposedly claimed someone had hit her and her head hurt. (9 RR 194-96). Herman said he was unable to untie the scarf, but the appellant directed him to a pair of scissors in a drawer and he cut the scarf. (9 RR 164-65).

This Court need not call the family members liars to understand how the jury was free to discredit parts (at least) of their testimony. How "well-tied" was the appellant when she was found? How emotional was she? Was the pillow sham under the chair when they arrived? The only sources of information for these details at trial were defense witnesses who had been close in-laws of the appellant's for decades. The jury could have believed the core of their testimony but inferred that parts, at least, were either fudged in favor of a woman they did not want to believe was a murderer, or misremembered by witnesses who didn't take notes when they unexpectedly stumbled onto a horrific scene.

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ed his experiment, he found that the pillow sham got stuck in the door frame at the same point where there was a rip in the pillow sham. (6 RR 217).

Alternatively, the jury could have believed they were liars. Was the appellant even in the closet? The only evidence of that is witness testimony, which the jury may always disbelieve based purely on credibility, and some easily fabricated evidence—a torn scarf and pants that had been defecated in. The import or placement of that evidence depended on the appellant's statements or the testimony of her family members.

To find the evidence insufficient, this Court *must* credit the family members' testimony or the appellant's statement. But that violates the cardinal rule of sufficiency review, that the jury, not an appellate court, determines witness credibility.

The Fourteenth Court viewed the circumstances of guilt in the light most favorable to the verdict, disregarded contrary evidence the jury was free to disregard, and correctly concluded the evidence was sufficient.

The Fourteenth Court's opinion is an excellent example of sufficiency review in a circumstantial-evidence case. *See Melgar v. State*, 593 S.W.3d 913, 920-22) (Tex. App.—Houston [14th Dist.] 2019, pet. granted). It acknowledged, as this Court recognized in *Braughton v. State*, 569 S.W.3d 592 (Tex. Crim. App. 2018), that reviewing courts must view the evidence in the light most favorable to the verdict and

honor all findings supported by the evidence and by any reasonable inferences that can be drawn from the evidence. It also acknowledged that any inconsistencies in the record must be resolved in favor of the verdict.

After noting that the only element the appellant contested was identity, the Fourteenth Court started with the most obvious and compelling circumstance of guilt: The appellant was at the scene. "Based on that fact, the jury knew that appellant at least had the opportunity to commit the murder." *Melgar*, 593 S.W.3d at 920.

It then noted it was "physically possible" for the appellant to have killed Jaime in a physical attack due to their relative sizes. *Ibid.* The Fourteenth Court noted the appellant had bruises on her arms and the jury could have inferred those came from a physical altercation with Jaime. *Ibid.*

The Fourteenth Court noted there was "a substantial basis" for concluding no one else was in the house at the time of the murder. *Id.* at 921. This stemmed from evidence that there was no sign of forced entry, and the appellant's statement that when she and Jaime got home the prior night they shut the garage door. *Ibid.*

The Fourteenth Court acknowledged a garage door was open when police arrived. *Ibid.* But this was consistent with the appellant committing the murder and then opening a garage door open so relatives—who said they had been invited to dinner that afternoon—would arrive and "rescue" her from the closet. *Ibid.*

The Fourteenth Court pointed to evidence of staging, both of the scene and of Jaime's body, as circumstances of guilt. *Ibid.* (citing *Temple v. State*, 390 S.W.3d 341, 361 (Tex. Crim. App. 2013)). The Fourteenth Court characterized the evidence of staging as "plentiful." There were cords around Jaime's ankles, which would be consistent with him being bound except they were placed there post-mortem. The scene in the bathroom, where the appellant claimed she had been locked in a closet, suggested staging. *Ibid.* A backpack full of valuables left in the garage seemed staged. *Ibid.*

The Fourteenth Court considered the appellant's demeanor—crying without tears—to be a circumstance of guilt. *Id.* at 521-22. And the deliberate manner in which she answered questions during the police interview suggested "she was withholding information and carefully choosing her words." *Id.* at 522 (citing *Temple*, 390 S.W.3d at 362).

The Fourteenth Court pointed to the inconsistencies in the appellant's statement. She claimed she heard her small dogs barking outside, but she did not hear Jaime being stabbed to death in the room next door.[3] *Ibid.* She told officers her seizure disorder was getting worse, but she had told her doctor it was stable. *Ibid.* The Fourteenth Court noted the appellant's seizure disorder was "central to her trial defense because it purported to explain why she could not remember any details about the claimed home invasion." *Ibid.* If the jury believed she was lying about her seizure disorder, it "could have reasonably determined that the entire defense was not credible." *Ibid.* (citing *Temple*, 390 S.W.3d at 361).

Finally, the Fourteenth Court addressed the pro-defense factoids and inferences the appellant presented in her brief to that court, which were like what she has presented here. "We cannot indulge these points or any of the others raised in the brief because they all lead to inferences that were rejected by the jury, and under our standard of re-

[3] The appellant's claim to have neither seen nor heard anything is implausible. She described sitting in the bathtub for *fifteen minutes* after Jaime went to let the dogs in. This was not a large house. (*See* State's Ex. 2 (diagram of home)). Unless Jaime closed the bathroom door when he left—an unnecessary act when they were alone in the house and, according to her story, had just finished having sex—the place in the bathtub where the appellant claimed to be seated had a clear view of the entryway into the bedroom, as well as the closet where Jaime was murdered. (*See* State's Exs. 5, 215, 730 (showing view from tub toward bedroom)).

view, we must consider all of the evidence in the light most favorable to the verdict." *Ibid.*

The appellant's argument consists mostly of giving weight to discredited defensive evidence and discounting the jury's ability to make logical inferences.

The appellant begins the argument portion of her brief with some bold assertions: "No evidence established [the appellant] caused Jaime's death. No physical evidence, in any way, to any degree, linked her to Jaime's murder." (Appellant's Brief at 79).

As circumstantial evidence goes, the State cannot think of a circumstance that creates a stronger inference of guilt than a defendant and victim being alone at the time of the murder. If two people walk in but only one walks out, the inference of guilt is not just logical, it's compelling. *See Skinner v. State*, 956 S.W.2d 532, 537 (Tex. Crim. App. 1997) (holding in one paragraph that where defendant was alone at scene with three victims and evidence connected him to killing two, evidence was sufficient to support conviction for killing third).[4]

[4] The State can find no other case explicitly holding that being alone with the victim at the time of the murder creates an inference of guilt. The likely reason for that is that the inference is so strong defendants in those cases do not raise sufficiency claims on bare it-wasn't-me defenses.

The beginning of the appellant's argument—denying the obvious inferences the jury could draw from the evidence—sets the tone for the rest. The State will respond to the sections of her argument and show the claims she's making do not undermine the legal sufficiency of the evidence.

A. For sufficiency review, it's irrelevant how the appellant was tied up, because the jury could have believed she never was.

The appellant complains about how the Fourteenth Court addressed how she was supposedly found tied up in the closet. (Appellant's Brief at 80-84). She claims the evidence "unequivocally" shows she was tied in a certain manner.

But the only evidence showing whether and how she was tied up is her statement and the testimony of the family members.[5] A fact finder is always free to disbelieve witness testimony based on credibility alone, even if that testimony is uncontradicted. *Hernandez v. State*, 161 S.W.3d 491, 500 (Tex. Crim. App. 2005). Were it otherwise, any defendant in a circumstantial case could win an appellate acquittal with a simple, "I didn't do it."

[5] There was a torn scarf and some pants that had been defecated in, but those do not prove she was tied up, or, if she was, how.

B. How a defendant cleaned up the scene is not an element of the offense.

The appellant points out that the State did not produce evidence showing how she cleaned any blood off of her or cleaned up the scene. (Appellant's Brief at 84-85). There was no blood found on the appellant, and aside from the area immediately around the bedroom closet there was no blood in the house. (9 RR 57-58).

Where, as here, a defendant has most of a day to clean up the crime scene, the degree to which the State can find evidence of the clean-up job will depend not on whether it happened but on how good the defendant was at cleaning up. The appellant cites no authority for the principle that the State's inability to show how a defendant cleaned up would render the evidence insufficient, and the State is unaware of any.

At the end of this point, the appellant challenges the State's observation that the lack of blood anywhere else at the scene points more toward the appellant's guilt than toward the presence of a mystery third person. The appellant notes investigators "could not exclude the possibility that more than one intruder had fled the premises without leaving blood traces." That's true, as far as it goes, but the State need not disprove every possible alternative to prove guilt beyond a reason-

able doubt. *See Laster v. State*, 275 S.W.3d 512, 520–21, 522–23 (Tex. Crim. App. 2009) (reiterating rejection of outstanding reasonable hypothesis analytical construct); *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993) ("The evidence is not rendered insufficient simply because [the defendant] presented a different version of the events").

The appellant states the "uncontroverted forensic evidence" shows it is "more likely that the killer(s) left without leaving blood trace evidence than it is that [the appellant] 'washed up' in the residence." (Appellant's Brief at 85). The appellant does not cite the record for this proposition; it seems to be just her framing her opinion as a statement of fact.

C. The appellant's physical condition does not render the evidence insufficient.

The appellant complains that the Fourteenth Court "wholly failed to acknowledge" the evidence that she had some physical problems, like lupus and Raynaud's disease. (Appellant's Brief at 86-88). But there was no testimony that her condition made the appellant incapable of the attack. The appellant presented her argument to the jury and they rejected it. The appellant presents no authority showing the

jury had to accept her version of her own health condition, or to make specific inferences from it.[6]

The appellant complains the Fourteenth Court noted it was "physically possible" for her to commit the murder. She claims the Fourteenth Court's obligation was to determine whether the evidence of her physical condition affirmatively proved she did it. (Appellant's Brief at 86). But in a circumstantial evidence case, not every circumstance has to point toward guilt. *Temple v. State*, 390 S.W.3d 341, 359 (Tex. Crim. App. 2013). Moreover, in a case where the evidence shows

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[6] Both the nature of Jaime's injuries as well as the fact that he did not use a readily available firearm are consistent with the attacker being somewhat feeble.

All of Jaime's injuries were shallow, with none of the stab wounds going more than three inches deep and most being much shallower than that. (State's Ex. 719A).

Jaime had defensive injuries on the outside of his arms and hands—as though he was trying to block blows—but he had no one else's DNA under his fingernails, showing he did not scratch his attacker trying to fight back. (8 RR 173-74; Def's. Ex. 22). He had no injuries to his back, showing that he was facing his attacker for the entire assault. (9 RR 44-45). Yet had he simply turned around where he was standing in the closet, there was a loaded pistol sitting on a shelf at waist height. (4 RR 136-37; State's Exs. 377-78).

At trial, defense counsel argued that the fact that Jaime was in this closet showed that he went for the gun because he was being attacked by a home invader. (8 RR 111-13). That's a possible inference. But it requires believing Jaime encountered a home invader and made it all the way to the closet without being stabbed—because there is no blood anywhere else in the house—but once there he turned around to face his attacker and, while withstanding dozens of weak knife attacks, never reached for the gun.

A different inference to draw from the evidence is that the murderer was someone Jaime did not wish to shoot, or someone weak, who Jaime thought he could fend off with his hands. Someone like the appellant.

the defendant was alone with the victim at the time of the murder, the inference of guilt is already so strong that proof that it was physically possible for the defendant to do the deed really is enough.

While the appellant now claims the jury had to make pro-defense inferences from her medical evidence, she faults the Fourteenth Court for making pro-verdict inferences from other medical evidence. The evidence showed the appellant had bruises on her upper arms, which the Fourteenth Court noted the jury could have inferred were caused while killing Jaime.

The appellant notes there was no testimony stating the bruises came from the fight, but of course the only other witness to the murder was dead so there couldn't be. The appellant claims that seeing bruising on a defendant accused of committing a very physical murder and inferring the bruising came from the altercation is "supplying a 'bridge to the analytical gap' in the prosecution's case by engaging the in the rankest speculation about the possible meaning of evidence." (Appellant's Brief at 87). But at trial the appellant pointed to the lack of bruising on her hands as evidence she didn't do it. (13 RR 138). The connection between injuries and being in an altercation is obvi-

ous, and the jury was free to make inferences both for and against the appellant based on her physical condition.

The appellant moves on to complain that the Fourteenth Court paid little attention to the fact that she had a "bump" on her head. (Appellant's Brief at 88). Just like the bruises, though, neither the jury nor the Fourteenth Court had to accept the appellant's version of how this injury was inflicted.

This section contains the silliest paragraph of the appellant's brief. She notes that the prosecutor did not show the medical examiner pictures of the appellant's bruises and ask for an opinion about the cause of the bruises. (Appellant's Brief at 88). The appellant claims "[i]t can be fairly assumed this [omission] was carefully calculated on the prosecutor's part, no doubt, due to the fact that [the medical examiner's] opinion was not helpful." This is just another of defense counsel's baseless attacks on the trial prosecutor's integrity, which were rife in his brief to the Fourteenth Court but which he toned down on discretionary review.

What makes the point silly is that defense counsel had a chance to cross-examine the medical examiner, and *he* didn't ask her about the bruising. (8 RR 195-217, 224). Defense counsel fails to explain

why we can "fairly assume" the prosecutor's failure to ask a question had a nefarious explanation but his failure did not.

D. The appellant's complaint about how the Fourteenth Court treated the crime scene evidence is just a complaint that it viewed the evidence in the light most favorable to the verdict and deferred to the jury's credibility determination.

The appellant claims the Fourteenth Court "wholly ignored" "evidence contrary to or inconsistent with theories of possible 'staging.'" (Appellant's Brief at 89).[7] She spends several pages complaining that the Fourteenth Court drew pro-verdict inferences from ambiguous evidence. (Appellant's Brief at 89-95).

She claims the fact that the garage door was open shows it was fallacious for the State and Fourteenth Court to rely on the lack of evidence of forced entry. (Appellant's Brief at 90-91). But the only evidence the garage door was open at any relevant time was testimony from the appellant's family members—the crime scene photos showed an open garage, but the jury did not have to believe the family members the garage door was open when they got there.

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[7] The appellant also complains the Fourteenth Court "jettisoned" "any semblance of a rationality review" "by affording absolute deference to the jury's verdict." (Appellant's Brief at 89). This complaint is so vague and detached from any particular holding it's impossible to respond to.

Moreover, the appellant's brief misapprehends the logical import of the open garage door—proving when the garage door was opened was not essential to the State's case, but it was for the defense's. The appellant's presence at the scene alone with her murdered husband created a very strong inference of guilt. Without evidence showing someone else entered the house, this inference is overwhelming.

The garage had two sides, one used for parking and the other used for storage. (Def.'s Exs. 2018, 2022-24). In her statement to police, the appellant said she the garage doors were closed when she and Jaime got home that evening, they entered through the parking-side door, and there was no reason for the storage-side door to be open. The Fourteenth Court was correct to hold the jury could have inferred the storage-side garage door was not left open before the murder, which would create an inference the appellant and Jaime were alone.

The appellant discusses the evidence purporting to show missing property from the home. (Appellant's Brief at 91-93). The appellant notes the State "did not prove that property had not been taken," though that's likely because proving this particular negative would have been impossible. But the State need not affirmatively disprove that property was taken. Instead, the jury was free to disbelieve the

witnesses who claimed it was. The evidence of stolen property came exclusively from statements by the appellant and her daughter; that is not the sort of evidence the jury had to believe.

The appellant notes that "DNA foreign to [her], Jaime, and their family, were found on" various locations around the house. But there was no evidence of when that DNA was left there, so that does not render the evidence insufficient.

The appellant complains that evidence of staging is "inherently problematic." (Appellant's Brief at 93). Quoting an unpublished case from this Court describing a different subject, the appellant claims this testimony was "too speculative or conclusory to be considered probable for legal-sufficiency review." (Appellant's Brief at 94 (quoting *Walker v. State*, No. PD-1429-14, 2016 WL 6092523, at *14 (Tex. Crim. App. Oct. 19, 2016)(not designated for publication)).

But in a published opinion this Court has accepted opinion testimony that a scene looked staged as a circumstance of guilt. *Temple*, 390 S.W.3d at 362. The appellant tries to distinguish *Temple* by noting that the scene there was staged in a different way (Appellant's Brief at 93 n.105), but that does not undermine the legal import of its holding or the validity of the Fourteenth Court's reliance on it.

E. The Fourteenth Court was correct to hold the appellant's lies to police created an inference of guilt.

The appellant spends a couple of pages mischaracterizing part of the Fourteenth Court's opinion. (Appellant's Brief at 95-96). The Fourteenth Court held, in a statement of the obvious, that the appellant's "inconsistent" statements to police about her medical condition could have allowed the jury to determine her defense, which hinged on her medical condition, was "not credible." *Melgar*, 593 S.W.3d at 922. The Fourteenth Court cited *Temple* for the proposition that a defendant's inconsistent statements could be considered a circumstance of guilt.

The appellant characterizes the Fourteenth Court's opinion as "rel[ying] on 'inconsistent' statements as affirmative evidence of guilt." (Appellant's Brief at 95). She cites several cases holding a jury could not infer an element of the offense from a defendant's denial of that offense.

But that's not what happened here. All the Fourteenth Court noted was that the appellant's defense—that she was unconscious in a closet while someone else murdered her husband—depended on her credibility, and lies she told police on subjects related to her defense naturally might cause the jury to disbelieve the core of her defense.

Deferring to credibility determinations like that is at the core of sufficiency review.

F. The appellant's claim that the lack of a motive "undermines the verdict's rationality" is without basis in the law.

The appellant concludes her argument by claiming the lack of a proven motive "undermines the verdict's rationality." (Appellant's Brief at 99-100). The appellant cites no authority for this proposition, and the State is unaware of any.

Motive is not an element of murder. *See Delacruz v. State*, 278 S.W.3d 483, 491 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd). Nor is motive, on its own, sufficient to prove identity. *See Temple*, 390 S.W.3d at 360. With those two principles as a backdrop, and viewing the evidence in the light most favorable to the verdict as sufficiency review requires, it would be inappropriate to declare that the lack of a motive requires an acquittal in a case where the evidence was otherwise sufficient. This Court should reject the appellant's uncited argument to the contrary.

The appellant's grounds for review present nothing for review other than a bare sufficiency claim.

The appellant's argument does not incorporate his grounds for review. Upon examination, his grounds present little for this Court to review. .

The appellant's first ground asks whether the Fourteenth Court's opinion "comport[s] with *Jackson v. Virginia's* **additional** requirement that a reviewing court must determine 'whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt…'"[8] (emphasis in original). The State does not know what the appellant is getting at by referring to this as an "additional requirement"—the standard of legal sufficiency review is *the* requirement of *Jackson*. *See Jackson v. Virginia*, 443 U.S. 307, 309 (1979) (stating that question of case is what standard of review federal constitution required on sufficiency review). As best the State can tell, the appellant's first ground presents no legal question beyond a basic sufficiency complaint.

The appellant's second ground asks whether, on sufficiency review, "a jury's assumed disbelief of certain witness testimony [can] es-

[8] The rest of the first ground is an argumentative summary of the Fourteenth Court's supposed errors.

tablish *substantive proof to the contrary of that testimony*." (emphasis in original). But—the appellant's argumentative characterizations notwithstanding[9]—the Fourteenth Court did not use disbelief as substantive proof of a contrary fact, nor did it make a legal ruling on that question. This ground is not properly before this Court.

The appellant's third ground asks whether the Fourteenth Court "fail[ed] to apply part of the legal sufficiency standard which, according to *Brooks v. State* 'essentially incorporates a factual sufficiency review into' a review for legal sufficiency." In a footnote, *Brooks* noted that the *Jackson* standard of legal sufficiency review "essentially" incorporated a factual sufficiency review. *Brooks v. State*, 323 S.W.3d 893, 902 n.19 (Tex. Crim. App. 2010). The Fourteenth Court applied

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[9] As best the State can tell from the rest of her brief, the appellant here is complaining about the Fourteenth Court's statement that her lies to police about matters related to her defense were a circumstance creating an inference of guilt. But a defendant's lies have long been held to constitute circumstantial evidence of guilt. *See Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) (*citing Graham v. State,* 566 S.W.2d 941, 951 (Tex. Crim. App. 1978) and *United States v. Cano–Guel,* 167 F.3d 900, 905 (5th Cir.1999)).

Using lies as a circumstance of guilt—*e.g.* "The defendant claimed to have an alibi, but we've proved that's a lie and will infer the defendant lied because he's guilty"—is conceptually different from using disbelief to create affirmative evidence of the contrary—*e.g.* "The defendant claimed to have an alibi, and I disbelieve that story based on the defendant's demeanor, which means he must be guilty." What happened here—using the appellant's lies about her medical condition, which was central to her defense, to infer the appellant's defense was a lie—is just a matter of assessing credibility, not the creation of evidence.

the correct standard for legal sufficiency review and held the evidence provided the jury a rational basis for its factual determinations. *Melgar*, 593 S.W.3d at 922. So the answer to the appellant's third ground seems to be simple: "No." At any rate, the appellant presents no argument directly related to this ground—like what it means to incorporate a factual sufficiency review into a legal sufficiency review, and what that looks like in this case—other than her general complaint about the sufficiency of the evidence.

The appellant's fourth ground asks whether the Fourteenth Court "fail[ed] to consider *all* of the trial evidence as required by [*Jackson*], as opposed to just the evidence tending to support the verdict…" (emphasis in original). The guilt phase of this trial lasted ten days. The appellant's brief to the Fourteenth Court was 203 pages, including a 157-page statement of facts and 21 pages of single-spaced bullet points detailing the evidence the appellant believed showed the evidence was insufficient. So obviously the Fourteenth Court's opinion did not discuss every piece of evidence.

But that court said it looked at the evidence the appellant discussed and, after disregarding the portions the jury could have disregarded, concluded the evidence was sufficient. *Melgar*, 593 S.W.3d at

922. Again the answer to the appellant's ground for review is a simple: "No." Just because the Fourteenth Court did not give evidence probative weight does not mean it failed to consider it. If a reviewing court gave probative weight to all evidence on sufficiency review it would vitiate the jury's role as factfinder.

This Court can review any intermediate court opinion it wishes. But there are no interesting legal questions presented in this case. It's just a bare claim that the evidence is insufficient and the Fourteenth Court arrived at an incorrect result.

Conclusion

The State asks this Court to either dismiss this case as improvidently granted or affirm the Fourteenth Court's judgment.

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